

REMARKS

Claims 1-46 and 48-55 are pending in the application. Claims 11-17, 36-41, 44, and 49-51 are withdrawn from consideration. Claim 47 has previously been canceled without prejudice or disclaimer of the subject matter contained therein.

Claims 1 and 55 have been amended. Claim 56 is newly added.

Applicants, by amending or canceling any claims, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert the original claim scope of any claim, even if amended or canceled, in a continuing application.

It is respectfully submitted that the above amendments to the claims introduce no new matter within the meaning of 35 U.S.C. §132. Accordingly, Applicants request reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

- I. Claims 1-8, 24-30, 32-35, 42, 43, 46, 48, 52, 53, and 55 stand rejected under U.S.C. § 102(b) as being anticipated by Bailey (US 4,919,332 as set forth on page 2 of the Official Action.***

The Examiner asserts that claims 1-8, 24-30, 32-35, 42, 43, 46, 48, 52, 53, and 55 are anticipated by Bailey. This rejection is respectfully traversed.

"Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, "when evaluating the scope

of a claim, every limitation in the claim must be considered. U.S.P.T.O. personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered." *U.S.P.T.O. Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*, page 9, October 26, 2005. As the Federal Circuit stated, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)).

Bailey discloses a pop-up irrigation sprinkler, including a housing 2 defining an internal chamber 3. A riser tube 8 is located within the housing 2, and is longitudinally movable out of said internal chamber 3 to the "elevated position" as shown in Fig. 2. The position of the riser tube 8 as shown in Fig. 1 is in the "retracted position." See column 3, lines 39-61.

"The upper end of the riser tube 8 is provided with a connecting neck 10, to which a collar 11 of a sprinkler head or other attachment 12 may be sealingly connected." See column 1, lines 62-68.

"The sprinkler head 12 is provided with a suitable attachment means 14 for attachment to a lid 15, said lid 15 being provided to prevent soil and other materials, such as fertilizer, insect and weed control materials or the like, from becoming lodged with the housing 2 or the sprinkler head 12 of the irrigation sprinkler 1, to consequently inhibit the movement of the various components of the system. In the retracted position of the riser, the sprinkler head or

other attachment 12 is retained fully within the confines of the housing 2 such that the lid 15 preferably lies adjacent to or slightly below the ground level surface 13." See column 4, lines 1-12.

"The riser tube 8 is sealingly connected at the upper end thereof to the upper end of said housing 2 by means of a flexible diaphragm 16, thus providing a watertight connection between the riser tube 8 and the housing 2. Preferably, the flexible diaphragm 16 is of annular construction, moulded in the shape of a frustum of a cone of rubber or other flexible and elastic material, and is provided with integrally moulded flanges 17 and 18 at the inner and outer circumferences thereof respectfully, for sealing attachment to the riser tube 8 and the housing 2 respectively." See column 4, lines 13-23.

It is noted that the lid 15 is part of the sprinkler head 12, and moves together with the sprinkler head 12 upwardly and downwardly between the "retracted position" and the "elevated position." Further, it is noted that the flexible diaphragm 16 is contained within the housing 2 when the sprinkler head 12 is in the "retracted position", and moves out of the housing 2 when the sprinkler head 12 is in the "elevated position." See Figure 2.

The claims have been amended as discussed during the in-person interview held on May 25, 2011, to more clearly indicate the location and configuration of the sprinkler head 12 and flexible diaphragm 16 in the "retracted position" and "elevated position."

Clearly, the flexible diaphragm 16 extends out of the housing 2 when the sprinkler head 12 is in the "elevated position" unlike the claimed combination "wherein the diaphragm is fully contained within the housing in both the first and second positions. Thus, Bailey does not anticipate the claim subject matter.

In view of the above, it is submitted that Bailey does not teach each and every element of the claims as required for anticipation under 35 U.S.C. §102. Thus, the Examiner is respectfully requested to withdraw this rejection.

II. Claim 9 stands rejected under U.S.C. § 103(a) as being unpatentable over Bailey (US 4,919,332) as applied to claims 1-8, 19, 24-30, 32-35, 42, 43, 48, 52, 53, and 55 Above, and further in view of Kantor et al. (US 6,016,972) as set forth on page 7 of the Official Action.

The Examiner asserts that "[It] would have been obvious to one of ordinary skill in the art to make the sprinkler head of Bailey et al. be a reactionary sprinkler head as in Kantor et al. for a wider distribution range." This rejection is respectfully traversed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Bailey is discussed in detail in paragraph I above. Kantor et al. is cited by the Examiner for only teaching a reactionary rotatable sprinkler head (col. 1, lines 10-13), and does not add any relevant teaching regarding the base claimed combination.

Thus, nothing in Bailey and Kantor et al. taken alone or in combination, render the claimed subject matter obvious within the meaning of 35 U.S.C. §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

III. Claims 18 and 20-22 stand rejected under U.S.C. § 103(a) as being unpatentable over Bailey (US 4,919,332) as applied to claims 1-8, 19, 24-30, 32-35, 42, 43, 48, 52, 53, and 55 above, and further in view of Lawson et al. (US 6,186,413) as set forth on page 7 of the Official Action.

The Examiner asserts that “[It] would have been obvious to one of ordinary skill in the art at the time of the invention to have the motivation to provide the inlet port of Bailey et al. with the filter of Lawson et al. for filtering out particulates.” This rejection is respectfully traversed.

The Examiner also asserts that “[It] would have been obvious to one of ordinary skill in the art to provide the inlet end of Bailey et al. with the flow control assembly of Lawson to ensure only a certain amount of fluid is allowed to enter.” This rejection is respectfully traversed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of

secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Bailey is discussed in detail in paragraph I above. Larson et al. is cited by the Examiner for only teaching an inlet port fitted with a filter, and does not add any relevant teaching regarding the base claimed combination.

Thus, nothing in Bailey and Larson et al. taken alone or in combination, render the claimed subject matter obvious within the meaning of 35 U.S.C. §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

IV. Claims 10, 23, and 31 stand rejected under U.S.C. § 103(a) as being unpatentable over Bailey (US 4,919,332) in view of Kantor et al. (US 6,016,972) as applied to claims 1-8, 19, 24-30, 32-35, 42, 43, 48, 52, 53, and 55 above, and further in view of Mehoudar et al. (US 6,000,634) as set forth on page 9 of the Official Action.

The Examiner asserts that "[It] would have been obvious to one of ordinary skill in the art at the time of the invention to have the motivation to modify the sprinkler head of Bailey et al. with the boss and bushing of Mehoudar et al. to make integral the sprinkler head and cover (col. 3, line 14-17)." This rejection is respectfully traversed.

The Examiner also asserts that "[It] would have obvious to one of ordinary skill in the art at the time of the invention to have the motivation to modify the inlet port of Bailey et al. with the differential pressure membrane of Mehoudar et al. to supply a substantially constant flow rate (col. 4, lines 26-31). This rejection is respectfully traversed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Bailey is discussed in detail in paragraph I above. Kantor et al. is discussed in paragraph II above. Mehoudar et al. is cited by the Examiner for only teaching a sprinkler head formed with an axial boss (9b) rotatably received with a corresponding bushing (10), and does not add any relevant teaching regarding the base claimed combination.

Thus, nothing in Bailey, Kantor et al., and Mehoudar et al. taken alone or in combination, render the claimed subject matter obvious within the meaning of 35 U.S.C. §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

V. *Claim 45 stands rejected under U.S.C. § 103(a) as being unpatentable over Bailey (US 4,919,332) as applied to claims 1-8, 19, 24-30, 32-35, 42, 43, 48, 52, 53, and 55 above, and further in view of McKenzie et al. (US 2002/0153432) as set forth on page 10 of the Official Action.*

The Examiner asserts that "[It] would have been obvious to one of ordinary skill in the art at the time of the invention to have the motivation to modify the stem of Bailey et al. with the straighteners of McKenzie et al. to reduce turbulence in the flow passing through (paragraph 0063)." This rejection is respectfully traversed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or

references, when combined, must disclose or suggest all of the claim limitations. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Bailey is discussed in detail in paragraph I above. McKenzie et al. is cited by the Examiner for only teaching a stem member fitted, adjacent the outlet end thereof, with inwardly projecting radial flow straightening fins (Fig. 3, 33), and does not add any relevant teaching regarding the base claimed combination.

Thus, nothing in Bailey and McKenzie et al. taken alone or in combination, render the claimed subject matter obvious within the meaning of 35 U.S.C. §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

VI. *Claim 54 stands rejected under U.S.C. § 103(a) as being unpatentable over Bailey (US 4,919,332) as applied to claim 52 above, and further in view of Bethea et al. (US 6,340,059) as set forth on page 11 of the Official Action.*

The Examiner asserts that "[It] would have been obvious to one of ordinary skill in the art at the time of the invention to have the motivation to modify the sprinkler of Bailey et al. with the hook of Bethea et al. to securely mount the sprinkler (col. 3, lines 63-65)." This rejection is respectfully traversed.

To establish an obviousness rejection under 35 U.S.C. § 103(a), four factual inquiries must be examined. The four factual inquiries include (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary consideration. *Graham v. John Deere*, 383 U.S. 1, 17-18 (1966). In view of these

four factors, the analysis supporting a rejection under 35 U.S.C. 103(a) should be made explicit, and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Furthermore, even if the prior art may be combined, there must be a reasonable expectation of success, and the reference or references, when combined, must disclose or suggest all of the claim limitations. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Bailey is discussed in detail in paragraph I above. Bethea et al. is cited by the Examiner for only teaching a hook provided for suspension of the sprinkler in an upright position or an inverted position position fig. 1, 30, 40), and does not add any relevant teaching regarding the base claimed combination.

Thus, nothing in Bailey and Bethea et al. taken alone or in combination, render the claimed subject matter obvious within the meaning of 35 U.S.C. §103. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

CONCLUSION

Applicants believe that a full and complete response has been made to the pending Office Action and respectfully submit that all of the stated grounds for rejection have been overcome or rendered moot. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative at the number below to expedite prosecution.

If an extension of time is necessary to prevent abandonment of this application and is not filed herewith, then such extension of time is hereby petitioned for under 37 C.F.R. §1.136(a). Any fees required for further extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our Deposit Account No. 14-0112. Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,
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